

Nov 02, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WASHINGTON STATE
UNIVERSITY,

Plaintiff,

v.

PRO ORCHARD MANAGEMENT
LLC, a Washington limited liability
company; and APPLE KING LLC,
a Washington limited liability company.

Defendants.

No. 2:20-cv-00038-SMJ

**ORDER DENYING MOTION FOR
JUDGMENT ON THE
PLEADINGS AND GRANTING
MOTION TO COMPEL**

To begin, the Court denied Pro Orchard Management LLC (“Pro Orchard”) and Apple King LLC’s (“Apple King”) (collectively, “Defendants”) motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), ECF No. 37, at a hearing addressing other issues of concern. The motion addressed an inoperative complaint. Even so, the Court finds Plaintiff Washington State University (“WSU”) has pleaded enough facts in its First Amended Complaint, ECF No. 10, to satisfy the *Iqbal* standard.

Also pending before the Court is WSU’s motion to compel discovery. ECF No. 49. The Court grants the motion to compel.

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS AND
GRANTING MOTION TO COMPEL – 1

BACKGROUND

WSU owns United States Plant Patent No. 21,710 (“Plant Patent”). ECF No. 10-1. The Plant Patent protects intellectual property developed by WSU called the “WA 2” apple cultivar. ECF No. 10 (“FAC”)¹ ¶ 1. Breeding a new apple cultivar takes several years and involves many steps. *See* ECF No. 10-1. The WA 2 apple originated from a seed collected from the fruit of the “Splendour” cultivar, which WSU researchers fertilized with a “Gala” male parent. ECF No. 10-1 at 2. According to the Plant Patent, “‘WA 2’ is an attractive apple that is distinct in appearance from that of other commercially grown apples and has outstanding texture, being very firm, crisp and juicy, both fresh and after 60 days of regular cold storage.” *Id.* at 2–3.

Before the Plant Patent issued, WSU assigned the patent application to Washington State University Research Foundation (“Research Foundation”), a nonprofit corporation that formerly handled technology licensing for WSU. *Id.* ¶ 11. The Research Foundation thus owned the Plant Patent when it issued, but later reassigned it to WSU, and WSU continues to hold the Plant Patent today. *Id.*

In February 2011, the Research Foundation started entering Non-Exclusive License Agreements for WA 2 with Washington growers. *Id.* ¶ 12. The Research

¹ Though this docket entry contains WSU’s First Amended Complaint, this memorandum will refer to it simply as the “Complaint” for clarity and brevity.

1 Foundation entered a Non-Exclusive License Agreement (“Agreement”) for WA 2
2 apples with Keller Fruit, Inc. (“Keller Fruit”), a grower. *Id.* ¶ 14. Pro Orchard
3 likewise grows apples. *Id.* ¶ 3. Apple King packs and sells apples. *Id.* ¶ 3.
4 Defendants have the same owners as Keller Fruit. *Compare* ¶¶ 3 & 4 *with* ¶ 14.

5 The Agreement granted Keller Fruit the right to propagate, use, and sell WA
6 2 apple trees or apples. *Id.* ¶ 16. It did not grant any rights to Pro Orchard or Apple
7 King. *Id.* ¶ 16. Defendants learned of the Plant Patent shortly after it was issued. *Id.*
8 ¶ 18; *see also* ECF No. 27 ¶ 18 (Defendants admit in their Answer that “they ‘have
9 been aware of Plant Patent No. 21,710.’”).

10 WSU alleges Pro Orchard “has grown WA 2 trees, asexually reproduced WA
11 2 trees, harvested apples from WA 2 trees, and consigned WA 2 apples for sale,”
12 all without a license. *Id.* ¶ 19. WSU alleges in detail that Pro Orchard has (1) made
13 the patented plant by asexually reproducing WA 2 trees through grafting; (2) used
14 the patented plant by growing WA 2 trees and harvesting their apples; and (3) sold
15 the patented plant by consigning WA 2 apples for sale. *Id.* ¶¶ 20–23. Defendants
16 admit these allegations in their Answer: “Keller Fruit Inc. d/b/a Defendant Pro
17 Orchard Management has grafted, planted, and grown WA 2 trees, and consigned
18 them for sale to Apple King.” ECF No. 27 ¶ 21.

19 WSU also alleges Defendants have induced third parties to infringe its Plant
20 Patent. FAC ¶ 24. By consigning WA 2 apples that Pro Orchard has harvested to

1 Apple King for Apple King to sell, WSU alleges Pro Orchard has induced Apple
2 King to infringe its Plant Patent. *Id.*

3 WSU alleges it has not licensed Apple King to sell the WA 2 apples. *Id.* ¶ 26.
4 Apple King packs the unlicensed WA 2 apples that it receives on consignment from
5 Pro Orchard and then sells them to third parties. *Id.* Apple King sells these
6 consigned WA 2 apples through brokerage firms. *Id.* Right now, WSU does not
7 know the persons or entities that bought the WA 2 apples from Apple King. *Id.*

8 In sum, WSU claims Defendants have directly infringed its patents and
9 induced others to infringe its patent. *See generally id.*

10 Defendants move for judgment on the pleadings under Federal Rule of Civil
11 Procedure 12(c). ECF No. 37. Defendants argue WSU has failed to allege they make,
12 use, offer to sell, or sell WA 2 apples; Apple King cannot be a direct infringer
13 because, as consignee, it did not sell any WA 2 apples; providing scion wood is not
14 an infringing act; and neither Apple King nor Pro Orchard has induced infringement
15 even if either provided WA 2 scion wood to third-party growers. *See generally id.* It
16 also claims WSU omits several necessary parties requiring mandatory joinder. *Id.* at
17 19–21.

18 WSU opposes the motion. ECF No. 41. WSU argues it has plausibly alleged
19 direct infringement against both Pro Orchard and Apple King. *Id.* at 12–19. Pro
20 Orchard (1) grafted the patented plant, which constitutes asexual reproduction; (2)

1 grew WA 2 fruit trees and harvested the fruit, which constitutes use of patented
2 plant; and (3) sold the patented plant by consigning WA 2 apples to Apple King for
3 sale. *Id.* at 13. WSU alleges that “Apple King packs the unlicensed WA 2 apples
4 that it receives on consignment from Pro Orchard Management and then sells them
5 to third parties,” without a license to do so. *Id.* at 14. It further contends it has
6 plausibly alleged induced infringement. *Id.* at 19–24. And other potentially
7 infringing growers are neither necessary nor indispensable parties. *Id.* at 24–27. In
8 the event the Court grants Defendants’ motion, WSU finally asks the Court to grant
9 it leave to amend. *Id.* at 24.

10 WSU also moves to compel Defendants to respond to seven interrogatories
11 and six requests for production (“RFP”) seeking discovery on Defendants’
12 infringing activities and affirmative defenses. Defendants responded to the motion
13 to compel, ECF No. 54, WSU replied, ECF No. 57, and Defendants filed a surreply,
14 ECF No. 60.

15 STANDARD OF REVIEW

16 Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a
17 “short and plain statement of the claim showing that the pleader is entitled to
18 relief.” The complaint need not provide “detailed factual allegations,” but it
19 “requires more than labels and conclusions, and a formulaic recitation of the
20 elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S.

1 544, 555 (2007). Plaintiffs must plead enough facts “to ‘state a claim to relief that
2 is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
3 *Twombly*, 550 U.S. at 570). Though *Iqbal* announced the standard governing a Rule
4 12(b)(6) motion, the Ninth Circuit has “said that Rule 12(c) is ‘functionally
5 identical’ to Rule 12(b)(6) and that ‘the same standard of review’ applies to motions
6 brought under either rule.” *U.S. ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637
7 F.3d 1047, 1054 n.4 (9th Cir. 2011).

8 “A claim has facial plausibility when the plaintiff pleads factual content that
9 allows the court to draw the reasonable inference that the defendant is liable for the
10 misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin
11 to a ‘probability requirement,’ but it asks for more than a sheer possibility that a
12 defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).
13 “[W]hether a complaint states a plausible claim for relief . . . [is] a context-specific
14 task that requires the reviewing court to draw on its judicial experience and common
15 sense.” *Id.* District courts must accept as true all factual allegations in the complaint
16 and construe the complaint, and resolve all doubts, in the light most favorable to the
17 plaintiff. *See id.*; *see also McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th
18 Cir. 1988).

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DISCUSSION**MOTION FOR JUDGMENT ON THE PLEADINGS**

As an initial matter, the Court denies Defendants motion for judgment on the pleadings because it addressed an inoperative complaint. WSU filed its Complaint on January 22, 2020. ECF No. 1. WSU then filed its First Amended Complaint on March 5, 2020. ECF No. 10. Defendants filed its motion for judgment on the pleadings on August 11, 2020. ECF No. 37. Defendants motion addressed the allegations in the initial Complaint but not the First Amended Complaint. *See id.*

An amended complaint supersedes the original complaint and renders it without legal effect. *E.g., Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012); *Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) (“As a general rule, when a plaintiff files an amended complaint, [t]he amended complaint supersedes the original, the latter being treated thereafter as non-existent.”) (internal citation and quotation marks omitted). The parties (and the Court) must therefore treat the original pleading filed by WSU as nonexistent. *See id.*

Even though Defendants’ motion addressed a nonexistent complaint, WSU’s First Amended Complaint satisfies the *Iqbal* standard. To begin with, the Court notes the elements a plaintiff must plead to state a claim of patent infringement. Infringement occurs when a defendant “(1) without authority (2) makes, uses, offers to sell, sells, or imports (3) the patented invention (4) within the United States, its

1 territories, or its possessions (5) during the term of the patent.” *Van Well Nursery,*
2 *Inc. v. Mony Life Ins. Co.*, 421 F. Supp. 2d 1321, 1334 (E.D. Wash. 2006); 35 U.S.C.
3 § 271(a).

4 To prove the third element in a plant patent infringement action, “the patentee
5 must prove [under 35 U.S.C. § 163] that the alleged infringing plant is an asexual
6 reproduction, that is, that it is the progeny of the patented plant.” *Imazio Nursery,*
7 *Inc. v. Dania Greenhouses*, 69 F.3d 1560, 1569 (Fed. Cir. 1995). “The ‘asexual
8 reproduction question,’ . . . is critical to the infringement analysis.” *Id.* “The statute
9 requires asexual reproduction of the patented plant for there to be infringement.” *Id.*
10 at 1570. “Asexual reproduction . . . means the progeny of the patented plant via
11 grafting, budding, cuttings, layering, division and the like, but not by seeds.”² *Id.* at
12 1569 (citation and quotation marks omitted); *J.E.M. Ag Supply, Inc. v. Pioneer Hi-*
13 *Bred Int’l, Inc.*, 534 U.S. 124, 132 (2001) (“Asexual reproduction occurs by
14 grafting, budding, or the like, and produces an offspring with a genetic combination
15 identical to that of the single parent—essentially a clone.”).

16 For a plant patent, the patentee has “the right to exclude others from asexually
17 reproducing the plant, and from using, offering for sale, or selling the plant so
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19

20 ² The Federal Circuit “construe[s] the term ‘asexual reproduction’ in section 163 in
the same way as [it does] in section 161.” *Imazio Nursery*, 69 F.3d at 1569.

1 reproduced, or any of its parts.” *Id.* § 163.³ “[S]ection 163 is plain in its statement
2 that a patentee may exclude others from asexually reproducing, selling or using the
3 plant.” *Yoder Bros. v. California-Fla. Plant Corp.*, 537 F.2d 1347, 1383 (5th Cir.
4 1976). “The negative inference to be drawn from this is that commission of one of
5 those acts would constitute infringement.” *Id.*

6 **A. Direct Infringement**

7 **1. Pro Orchard**

8 WSU alleges detailed facts describing how Pro Orchard has (1) made the
9 patented plant by asexually reproducing WA 2 trees through grafting; (2) used the
10 patented plant by growing WA 2 trees and harvesting their apples; and (3) sold the
11 patented plant by consigning WA 2 apples for sale. FAC ¶¶ 20–23; ECF No. 41 at
12 13.

13 *Grafting* WA 2 apple trees constitutes asexual reproduction—an infringing
14 activity. *See Imazio Nursery*, 69 F.3d at 1569; *Yoder Bros.*, 537 F.2d at 1383. *Using*
15 *those asexually reproduced WA 2 trees to grow fruit also constitutes patent*
16 *infringement. See 35 U.S.C. § 271(a); 35 U.S.C. § 163; see also Regents of Univ. of*
17 *California v. California Berry Cultivars, LLC*, No. 16-CV-02477-VC, 2017 WL
18 9531948, at *7 (N.D. Cal. Apr. 27, 2017) (growing fruit constitutes *use* of the
19

20 ³ “The provisions of this title relating to patents for inventions shall apply to patents
for plants, except as otherwise provided.” *Id.* § 163.

1 patented plant). If proven, asexually reproducing WA 2 trees by grafting, and using
2 the grafted trees to grow WA 2 apples, “would constitute infringement.” *See Yoder*
3 *Bros.*, 537 F.2d at 1383.

4 Defendants appear to admit these allegations in their Answer: “Keller Fruit
5 Inc. d/b/a Defendant *Pro Orchard Management* has grafted, planted, and grown
6 WA 2 trees, and consigned them for sale to Apple King.” ECF No. 27 ¶ 21
7 (emphasis added).

8 The Court concludes WSU pleaded enough facts to maintain a plausible
9 claim of direct infringement against Pro Orchard.

10 **2. Apple King**

11 WSU next alleges Apple King packs the unlicensed WA 2 apples that it
12 receives on consignment from Pro Orchard and then sells them to third parties. FAC
13 ¶ 26. Apple King argues packing does not constitute “using” an apple for plant
14 patent purposes. At a hearing addressing other issues, WSU appeared to concede
15 that it was not pursuing a claim of direct infringement against Apple King. Tr. (Oct.
16 28, 2020); *but cf.* ECF No. 41 at 10 (“[The First Amended Complaint] alleges Apple
17 King directly infringed by packing and selling the WA 2 apples it received from
18 Pro Orchard.”). The Court will not foreclose a WSU’s claim of direct infringement
19 against Apple King based on that off-the-cuff remark alone.

20 In statutory construction cases, “we begin, of course, with the language of

1 the statute.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980). Unless otherwise
 2 defined, courts interpret words “taking their ordinary, contemporary common
 3 meaning.” *Id.* (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979). “We have
 4 also cautioned that courts ‘should not read into the patent laws limitations and
 5 conditions which the legislature has not expressed.’” *United States v. Dubilier*
 6 *Condenser Corp.*, 289 U.S. 178, 199 (1933). Moreover, “subject-matter terms have
 7 been interpreted broadly to evolve with developments in science and technology.”
 8 *J.E.M. Ag Supply*, 534 U.S. at 137 n.9.

9 The term “use” has many definitions, but “[i]n terms of the infringing act of
 10 ‘use,’ courts have interpreted the term ‘use’ broadly.” *NTP, Inc. v. Research In*
 11 *Motion, Ltd.*, 418 F.3d 1282, 1316 (Fed. Cir. 2005), *abrogation on other grounds*
 12 *recognized in Avid Tech., Inc. v. Harmonic, Inc.*, 812 F.3d 1040, 1047 (Fed. Cir.
 13 2016). “[U]se,” . . . is a ‘comprehensive term and embraces within its meaning the
 14 right to put into service any given invention.’” *Id.* (quoting *Bauer & Cie v.*
 15 *O’Donnell*, 229 U.S. 1, 10–11 (1913)).

16 Defendants argue “[t]he way to use an apple is to eat it.” ECF No. 47 at 7.
 17 True, that’s one way to use an apple. But there are many other ways to “use” an
 18 apple. As WSU stresses, “To ‘pack’ apples has a specific meaning in the apple
 19 industry, which involves an extensive process of receiving apples from growers;
 20 washing them; testing them for starch and sugar content; sorting the apples for

1 color, size and quality; coating them with wax; packing them in boxes; storing some
2 apples under refrigeration; and storing others with higher starch content in sealed,
3 controlled atmosphere rooms to allow starch to change to sugar.” ECF No. 41
4 (citation omitted). Of course, packing WA 2 apples puts them into service for
5 further use and eventual consumption. But the packing process itself uses the apples
6 to prepare them for distribution into the market.

7 The Court finds WSU pleaded enough facts to maintain a plausible claim of
8 direct infringement against Apple King. WSU also alleges Apple King sells the
9 apples, but the Court declines to reach these arguments because “commission of
10 one of those acts [for example, “using” WA 2 apples] would constitute [direct]
11 infringement.” *See Yoder Bros.*, 537 F.2d at 1383.

12 **B. Induced Infringement**

13 “Whoever actively induces infringement of a patent shall be liable as an
14 infringer.” 35 U.S.C. § 271(b). To succeed on a claim of inducement, the patentee
15 must show (1) a direct infringement, (2) the alleged infringer knowingly induced
16 infringement, and (3) the alleged infringer possessed specific intent to encourage
17 another’s infringement. *Minnesota Min. & Mfg. Co. v. Chemque, Inc.*, 303 F.3d
18 1294, 1304–05 (Fed. Cir. 2002).

19 WSU has pleaded enough facts to maintain a plausible claim of direct
20 infringement against Defendants. *See Part A infra*.

1 **1. Knowledge of the patent**

2 WSU alleges that Defendants “have been aware of Plant Patent No. 21,710
3 since shortly after the patent issued on February 15, 2011.” FAC ¶ 18. Defendants
4 admitted in their Answer that “they ‘have been aware of Plant Patent No. 21,710.’”
5 ECF No. 27 ¶ 18. WSU has thus satisfied this element.

6 **2. Specific intent to induce infringement**

7 WSU must also establish that Defendants possessed specific intent to
8 encourage another’s infringement and not merely that Defendants knew the acts
9 alleged to constitute inducement. *See Manville Sales Corp. v. Paramount Sys., Inc.*,
10 917 F.2d 544, 553 (Fed. Cir. 1990). “The plaintiff has the burden of showing that
11 the alleged infringer’s actions induced infringing acts *and* that he knew or should
12 have known his actions would induce actual infringements.” *Id.* (emphasis in
13 original). Specific intent to encourage infringement “can be shown by
14 circumstantial evidence, but the mere knowledge of possible infringement will not
15 suffice.” *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir.
16 2009).

17 WSU alleges that Defendants provided WA 2 scion wood to unlicensed third
18 parties, so that those parties could “asexually reproduce WA 2 trees.” FAC ¶¶ 1, 24.
19 WSU also alleges that “Pro Orchard Management has induced Apple King to
20 infringe Plant Patent No. 21,710 by consigning WA 2 apples that it has harvested

1 to Apple King for Apple King to sell.” *Id.* ¶ 25. It further alleges Pro Orchard
2 induced Apple King to infringe its plant patent by providing WA 2 apples to Apple
3 King to pack. *Id.* ¶ 26. In other words, providing these unlicensed materials to third
4 parties supports a plausible inference that Defendants acted with specific intent to
5 encourage unlicensed asexual reproduction of WA 2 trees and the unlicensed
6 growing, packing, and sales of WA 2 apples. Together with Defendants’ admitted
7 knowledge of the patent, WSU has plausibly alleged that Defendants acted with
8 specific intent for these unlicensed third parties to infringe its patent.

9 The Court finds WSU has plausibly alleged claims of induced infringement
10 against Defendants.

11 **C. Mandatory Joinder**

12 Defendants argue that the Court should dismiss the lawsuit because all the
13 growers who provide unlicensed WA 2 apples to Apple King for sale by
14 consignment are necessary parties under Rule 19(a). ECF No. 37 at 18. WSU argues
15 even if additional growers are consigning unlicensed WA 2 apples to Apple King,
16 they are neither necessary nor indispensable parties. The Court agrees with WSU.

17 ““Courts have long held in patent, trademark, literary property, and copyright
18 infringement cases, any member of the distribution chain can be sued as an alleged
19 joint tortfeasor.”” *Costello Pub. Co. v. Rotelle*, 670 F.2d 1035, 1043 (D.C. Cir.
20 1981) (citation omitted). ““Since joint tortfeasors are jointly and severally liable,

1 the victim of . . . infringement may sue as many or as few of the alleged wrongdoers
2 as he chooses; those left out of the lawsuit, commentary underscores, *are not*
3 *indispensable parties.*” *Id.* (emphasis added). WSU may therefore sue any entity
4 or person in the supply chain “it sees fit.” *See id.*

5 In sum, WSU has stated a plausible claim for relief and Defendants are thus
6 not entitled to judgment on the pleadings. The Court denies the Defendants’ motion.

7 MOTION TO COMPEL

8 The Court “start[s] with the premise that pre-trial discovery is ordinarily
9 ‘accorded a broad and liberal treatment.’” *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th
10 Cir. 1993) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). “This broad right
11 of discovery is based on the general principle that litigants have a right to ‘every
12 man’s evidence,’ and that wide access to relevant facts serves the integrity and
13 fairness of the judicial process by promoting the search for the truth.” *Id.* (quoting
14 *United States v. Bryan*, 339 U.S. 323, 331 (1950)). Federal Rule of Civil Procedure
15 26(b) provides that parties may obtain discovery on:

16 [A]ny nonprivileged matter that is relevant to any party’s claim or
17 defense and proportional to the needs of the case, considering the
18 importance of the issues at stake in the action, the amount in
19 controversy, the parties’ relative access to relevant information, the
parties’ resources, the importance of the discovery in resolving the
issues, and whether the burden or expense of the proposed discovery
outweighs its likely benefit.

20 Fed. R. Civ. P. 26(b)(1). Relevant information “need not be admissible in evidence

1 to be discoverable.” *Id.* A court “must limit the frequency or extent of discovery
2 otherwise allowed” if

3 (i) the discovery sought is unreasonably cumulative or duplicative, or
4 can be obtained from some other source that is more convenient, less
5 burdensome, or less expensive; (ii) the party seeking discovery has had
6 ample opportunity to obtain the information by discovery in the action;
7 or (iii) the proposed discovery is outside the scope permitted by Rule
8 26(b)(1).

9 Fed. R. Civ. P. 26(b)(2)(C).

10 “A party seeking discovery may move for an order compelling an answer, . .
11 . production, or inspection.” Fed. R. Civ. P. 37(a)(3)(B)(iii), (iv). “[A]n evasive or
12 incomplete disclosure, answer, or response must be treated as a failure to disclose,
13 answer or respond.” Fed. R. Civ. P. 37(a)(4).

14 Under Federal Rule of Civil Procedure 33, “a party may serve on any other
15 party no more than 25 written interrogatories” relating “to any matter that may be
16 inquired into under Rule 26(b).” Fed. R. Civ. P. 33(a). “The responding party must
17 serve its answers and any objections within 30 days after being served with the
18 interrogatories.” Fed. R. Civ. P. 33(b)(2). “Each interrogatory must, to the extent it
19 is not objected to, be answered separately and fully in writing under oath.” Fed. R.
20 Civ. P. 33(b)(3). “The grounds for objecting to an interrogatory must be stated with
specificity. Any ground not stated in a timely objection is waived unless the court,
for good cause, excuses the failure.” Fed. R. Civ. P. 33(b)(4). Finally, responses to
interrogatories must be verified. Fed. R. Civ. P. 33(b)(5) (“The person who makes

1 the answers must sign them, and the attorney who objects must sign any
2 objections.”).

3 Under Federal Rule of Civil Procedure 34, a “party may serve on any other
4 party a request within the scope of Rule 26(b)” for production of documents “in the
5 responding party’s possession, custody, or control.” Fed. R. Civ. P. 34(a). “The
6 party to whom the [Request for Production] is directed must respond in writing
7 within 30 days after being served.” Fed. R. Civ. P. 34(b)(2)(A). The requesting party
8 “is entitled to individualized, complete responses to each of the [Requests for
9 Production] . . . , accompanied by production of each of the documents responsive
10 to the request, regardless of whether the documents have already been produced.”
11 *Louen v. Twedt*, 236 F.R.D. 502, 505 (E.D. Cal. 2006).

12 Here, WSU initially sought an order compelling

13 (1) Apple King, LLC to fully respond to Interrogatories Nos. 1-7 and
14 RFP Nos. 1-6, and produce all documents responsive to RFP Nos. 1-6;
15 and (2) Pro Orchard Management, LLC to fully respond to
Interrogatories Nos. 1-6 and RFP Nos. 2-3 and 5-6, and produce all
documents responsive to RFP Nos. 1-6.

16 ECF No. 49. Defendants argue that they have since responded to WSU’s requests,
17 mooted in part the motion to compel. ECF No. 54. WSU acknowledges the
18 supplemental responses moot its motion in part yet claims most of the supplemental
19 responses and requests for production remain deficient. ECF No. 57 at 5.

20 The Court agrees with Defendants that cooperation among the litigants is

critical, *see* ECF No. 54, and the parties shall cooperate throughout the discovery phase of this suit. So, the Court grants WSU's motion to compel. Defendants shall cooperate and provide complete responses to WSU's interrogatories and requests for production. The Court does not want to see another discovery motion suggesting Defendants provided "an evasive or incomplete disclosure, answer, or response." *See, e.g.*, Fed. R. Civ. P. 37(a)(4).

ORDER TO SHOW CAUSE

The Court ordered counsel for Defendants to show cause why the conduct specifically described in its Order, ECF No. 70, had not violated Federal Rule of Civil Procedure 11(b), Local Civil Rule 83.2(d)(3), and Washington Rule of Professional Conduct 3.3(a)(3). Defense counsel timely filed their response and provided several declarations in support. ECF Nos. 71, 72, 73, 74 & 75. Upon further review, the Court has decided not to impose sanctions.

Accordingly, **IT IS HEREBY ORDERED:**


1. Defendants' motion for judgment on the pleadings, **ECF No. 37**, is **DENIED**.
2. Plaintiff's motion to compel, **ECF No. 49**, is **GRANTED**, as amended in ECF No. 57.
3. Within **seven days** of entry of this Order, Apple King, LLC shall (a) serve full responses to Interrogatories Nos. 1–4 and 6, verified under

1 oath; and (b) serve supplemental responses to RFP Nos. 3–4 and 6, and
2 produce all documents responsive to RFP Nos. 1, 3–4, and 6.

3 **4.** Also, within **seven days** of entry of this Order, Pro Orchard
4 Management, LLC shall (a) serve full responses to Interrogatories Nos.
5 1–5, verified on oath; and (b) produce all documents responsive to RFP
6 Nos. 1, 3–4, and 6.

7 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
8 provide copies to all counsel.

9 **DATED** this 2nd day of November 2020.

10 
11 SALVADOR MENDEZ, JR.
12 United States District Judge
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